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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,153	11/12/2003	Shari S. Barnett	98-25 C3	7579

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EXAMINER

RAGONESE, ANDREA M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8W

<b>Office Action Summary</b>	Application N . 10/706,153	Applicant(s) BARNETT ET AL.	
	Examiner Andrea M. Ragonese	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.  
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-37 is/are pending in the application.  
 4a) Of the above claim(s) 30-37 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 22-29 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed on November 12, 2004 has been entered. Examiner acknowledges that **claim 22** has been amended.

### *Response to Arguments*

2. Applicant's arguments, with respect to the 102(b) rejection of **claims 22-23** and **25-29** as being anticipated by Scheu, filed on November 12, 2004, have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant's arguments, with respect to the 102(b) rejection of **claims 22-23** and **25-29** as being anticipated by Kidd, filed November 12, 2004, have been fully considered and are persuasive. Therefore, the 102(b) rejection of **claims 22-23** and **25-29** has been withdrawn.

### *Specification*

4. The disclosure is objected to because of the continuity paragraph as amended in the Preliminary Amendment on November 12, 2003 should be updated to reflect that each application has issued as a patent. Specifically, the phrase – now US Patent No. 6,651,663, – should be inserted after “filed May 25, 2001,” and – now US Patent No. 6,412,488 – should be inserted after “filed May 12, 1999”. Appropriate correction is required.

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5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. The abstract of the disclosure is objected to because of the use of improper sentence structure. The abstract should only contain complete sentences, not sentence fragments as it currently does in the first few lines. Correction is required. See MPEP § 608.01(b).

7. The use of the trademark BIPAP<sup>®</sup> has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

8. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. **Claims 22-23 and 25-29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheu (US Des. 412,745). Scheu teaches a patient interface device comprising all limitations recited in **claims 22-23 and 25-29**, but does not expressly disclose that at least one of the plurality of headgear attachment points is defined in a second plane that is disposed at a non-zero angle with respect to the first plane. Applicant has not asserted that this specific structure recited provides a particular advantage, solves a stated problem or serves a purpose different from that of the prior art of record in which the headgear attachment points are in a planar configuration, thus the use of structure lacks criticality in its utilization and design. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the first plane and the second plane at an angle of zero degrees because the mask would still be able to be secured to the straps and placed on the patient's face. Therefore, it would have been obvious to modify the patient interface device of Scheu by altering the second plane on which the headgear attachment points are placed to be at a non-zero angle with respect to the first plane because it is known in the art to angle the attachment points on a face mask in order to fit the contours of a patient's face and create a seal between the mask and the patient's face.

11. **Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Scheu (US Des. 412,745), as applied to **claims 22-23 and 25-29** above, in view of Kwok et al. (US 6,357,441 B1). Scheu discloses an apparatus comprising all the limitations recited in **claim 24**, with the exception of a distal portion of the cushion with an in-turned lip. However, the use of a cushion with an in-turned lip was known at the time the invention

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was made. Specifically, Kwok et al. teaches the use of a nasal mask cushion **30** with an in-turned lip **34** for prevent movement from occurring between the mask **60** and the wearer's head "[if] the fastening strap **68, 78** are tensioned to excess" (column 5, lines 15-20). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the mask of Scheu by altering the cushion to have an in-turned lip because it is known in the art, as taught by Kwok et al., to use an in-turned lip in order to resist the forces that result from strapping the mask onto the user's head.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **571-272-4804**. The examiner can normally be reached on Monday through Friday from 9:00 am until 5:00 pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR   
January 24, 2005

  
Henry Bennett  
Supervisor, Patent Examiner  
Group 3700